

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Giansante	Team: Squad #7	CCRB Case #: 201804072	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 04/14/2018 12:50 AM	Location of Incident: West 114th Street between St. Nicholas Avenue and Lenox Avenue	Precinct: 28	18 Mo. SOL 10/14/2019	EO SOL 10/14/2019	
Date/Time CV Reported Thu, 04/19/2018 2:08 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 04/26/2018 1:36 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DTS Alberto Pizarro	04954	934070	028 PCT
2. SGT Jose Hernandez	4180	936756	028 PCT
3. POM Yeraldy Bonifacio	15500	952482	028 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Billy Valerio	02511	932054	028 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Jose Hernandez	Abuse: Sergeant Jose Hernandez threatened to issue a summons to § 87(2)(b)	
B.SGT Jose Hernandez	Abuse: Sergeant Jose Hernandez threatened to seize § 87(2)(b) property.	
C.DTS Alberto Pizarro	Force: Detective Alberto Pizarro used physical force against § 87(2)(b)	
D.POM Yeraldy Bonifacio	Discourtesy: Police Officer Yeraldy Bonifacio spoke discourteously to § 87(2)(b)	
	§ 87(4-b), § 87(2)(g)	
§ 87(2)(b)	§ 87(4-b), § 87(2)(g)	

### Case Summary

On April 19, 2018, § 87(2)(b) filed the following complaint by phone with IAB, generating original log number 2018-15085 (BR01). The CCRB received the complaint on April 26, 2018.

On April 14, 2018, at approximately 12:50 a.m., § 87(2)(b) was sitting in his vehicle, which was double-parked on West 114<sup>th</sup> Street between St. Nicholas Avenue and Lenox Avenue in Manhattan. Sergeant Jose Hernandez, of the 28<sup>th</sup> Precinct, threatened to issue § 87(2)(b) a summons if he refused to move his vehicle (**Allegation A: Abuse of Authority, § 87(2)(g)**). Sgt. Hernandez also threatened to have § 87(2)(b) vehicle towed (**Allegation B: Abuse of Authority, § 87(2)(g)**). Detective Alberto Pizarro, also of the 28<sup>th</sup> Precinct, allegedly pushed § 87(2)(b) in the back (**Allegation C: Force, § 87(2)(g)**). Police Officer Yeraldy Bonifacio, also of the 28<sup>th</sup> Precinct, allegedly told civilian bystander § 87(2)(b) “Mind your fucking business and go in the building” (**Allegation D: Discourtesy, § 87(2)(g)**). § 87(4-b), § 87(2)(g)

§ 87(2)(b). Sgt. Hernandez ultimately called uniformed officers to the scene, and they issued a parking summons to § 87(2)(b) (BR02).

§ 87(2)(b) provided cellphone footage to the CCRB which was filmed by § 87(2)(b) another civilian witness, which shows a portion of the incident (BR03). The footage is summarized in the case file (BR04).

### Findings and Recommendations

- **Allegation (A) Abuse of Authority: Sergeant Jose Hernandez threatened to issue a summons to § 87(2)(b)**  
**Allegation (B) Abuse of Authority: Sergeant Jose Hernandez threatened to seize § 87(2)(b) property.**

It is undisputed that § 87(2)(b) vehicle was double-parked at the location, and that he initially refused to move the vehicle when ordered to do so. It is undisputed that § 87(2)(b) exited his vehicle during his dispute with the officers. It is further undisputed that Sgt. Hernandez told § 87(2)(b) that he would be issued a summons, and that the vehicle could be towed, if he refused to move the vehicle. It is further undisputed that officers eventually issued a summons for double-parking to § 87(2)(b) (BR02).

As will be discussed in the section regarding Allegation C, § 87(2)(b) alleged that Sgt. Hernandez threatened to have his vehicle towed, but that another officer threatened to issue him a summons and to have the vehicle towed as well. As Sgt. Hernandez admitted to making both threats, as he was the highest-ranking officer on scene, and as the investigation was unable to identify the other officer, these two allegations are pleaded against Sgt. Hernandez.

The New York City Department of Transportation’s (DOT) parking rules are enforced by the NYPD (BR05). Section 4-08(f)(1) of the Traffic Rules forbids double parking at all times for non-commercial vehicles (BR06). Section 4-08(a)(9) of the Traffic Rules permits officers to immobilize and tow any illegally parked vehicle (BR06).

§ 87(2)(g)

- **Allegation (C) Force: Detective Alberto Pizarro used physical force against § 87(2)(b)**

Throughout his statements to IAB and the CCRB, § 87(2)(b) maintained that there were three plainclothes officers present during the incident. He insisted that the third officer was the same officer with whom he had previously interacted during an incident in January 2018 (documented in CCRB case #201804071), and with whom he would later interact during an incident on April 17, 2018 (documented in CCRB case #201804073). The CCRB identified that officer as Det. Pizarro.

In his initial IAB complaint, § 87(2)(b) referred to Det. Pizarro as possibly being named “Ortiz” (BR08-BR10; BR01; BR11). He later admitted that this name was likely incorrect, and he did not explain how he obtained it. There was no officer with the surname “Ortiz” assigned to the 28<sup>th</sup> Precinct. § 87(2)(b) recounted that Det. Pizarro pushed him during the incident. He did not provide further detail. During his CCRB phone statement, § 87(2)(b) recounted that he refused to move his vehicle and exited it during the dispute (BR12). He later tried to approach the open driver’s door of his vehicle, and Det. Pizarro started touching or “pushing” on § 87(2)(b) back. § 87(2)(b) told Det. Pizarro to stop touching him, and Det. Pizarro moved away.

In his in-person CCRB statement, § 87(2)(b) recounted that Det. Pizarro first began approaching his vehicle’s driver’s door, which was closed and remained closed (BR13). § 87(2)(b) approached and told Det. Pizarro not to touch his car. Det. Pizarro backed away from the vehicle, and § 87(2)(b) attempted to walk toward the driver’s door. Det. Pizarro also tried to walk back to the vehicle, such that he was behind § 87(2)(b) and § 87(2)(b) was between him and the vehicle. Det. Pizarro then “pushed” or “shoved” § 87(2)(b) twice in the lower back. Although Det. Pizarro was pushing § 87(2)(b) from behind, § 87(2)(b) was able to specify that the officer used his right hand to do so. The pushes were not “hard” and did not disturb § 87(2)(b) balance.

Confusingly, § 87(2)(b) also recounted that when he first exited his vehicle during the dispute, Det. Pizarro got back into the unmarked vehicle and pulled it up so that it was parked ahead of his vehicle. He did not specify when Det. Pizarro exited the unmarked vehicle again such that he was able to push § 87(2)(b) near his vehicle.

§ 87(2)(b) and another civilian bystander, § 87(2)(b) both recalled there being three plainclothes officers present during the incident, though they did not provide detailed officer descriptions (BR14; BR15). § 87(2)(b) thought there were two or three plainclothes officers, and did not provide any officer descriptions (BR16). § 87(2)(b) is § 87(2)(b) cousin, and § 87(2)(b) and § 87(2)(b) are his friends. As will be discussed in the section regarding Allegation D, § 87(2)(b) claimed to have a very poor recollection of the incident and provided only a partial phone statement. § 87(2)(b)’s statement was found to be particularly unreliable.

Pertinently, § 87(2)(b) recounted that one of the three plainclothes officers got back into the unmarked vehicle around the time she began filming, and that he did not emerge again during the incident.

The bystanders differed with regard to whether the allegation itself took place. § 87(2)(b) recalled § 87(2)(b) telling officers not to touch him, but she could not say if any officer actually touched § 87(2)(b). § 87(2)(b) denied seeing any officer grab or push § 87(2)(b). § 87(2)(b) claimed that multiple officers grabbed § 87(2)(b), slammed him against a vehicle, and briefly struggled to pull his arms behind his back before relenting.

In the entirety of § 87(2)(b)'s cellphone footage, Sgt. Hernandez and PO Bonifacio are the only visible plainclothes officers. However, SnagIt Clip #2, embedded below (BR17), shows that someone else was driving the unmarked vehicle at the conclusion of the incident. The driver is not visible:



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Det. Pizarro denied that he was present during the incident (BR18). He is a Field Intelligence Officer at the 28<sup>th</sup> Precinct, but he also works in the field with Anticrime officers at times. Indeed, as documented in CCRB case #201804073, Det. Pizarro was working with Sgt. Hernandez when he encountered § 87(2)(b) three days after this incident.

Det. Pizarro's memo book shows that, at the time of the incident, he was working in a vehicle with Sgt. Pimentel and PO Dappolonia (BR19). It also shows that he ended his tour at 1:05 a.m. PO Dappolonia's memo book is consistent with Det. Pizarro's, as it also shows that he, Det. Pizarro, and Sgt. Pimentel were working in a vehicle together (BR20). PO Dappolonia marked the end of his tour at 1:20 a.m.

The CCRB obtained an audit showing the instances when officers ran § 87(2)(b) name and date of birth in the warrant system (BR21). It shows a search from April 14 at 1:47 a.m. which was apparently performed on Det. Pizarro's NYPD cellphone. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

The 28<sup>th</sup> Precinct Tour 3 roll call from April 13 shows that Sgt. Hernandez was the Anticrime supervisor, and that PO Bonifacio, PO Pennachia, and PO Vampas were assigned to Anticrime (BR22). Det. Pizarro and PO Dappolonia were working as "Assistant FIO." Sgt. Pimentel does not appear, likely as he is technically assigned to the Intelligence Division. The MOS Photo Terminal shows that PO Vampas and PO Pennacchia do not resemble Det. Pizarro at all.

Sgt. Hernandez denied that he and PO Bonifacio were working with any other plainclothes officer at the time of the incident, and he maintained his denial throughout the interview (BR23). His initial memo book entries from April 13 show that he was partnered solely with PO Bonifacio (BR24). The investigation did not obtain the remainder of Sgt. Hernandez's memo book entries for that date, due to an error regarding the correct date of the incident. When Sgt. Hernandez viewed the footage showing that someone else was driving the unmarked vehicle at the conclusion of the incident, he still could not recall there being any other plainclothes officer present. He acknowledged that the officer driving the RMP could have been a non-Anticrime officer, such as an FIO. When directly asked if Det. Pizarro was present during the incident, Sgt. Hernandez concluded that he could not recall.

PO Bonifacio similarly initially denied that any other plainclothes officer was present during the incident (BR25). However, his 11:30 p.m. memo book entry regarding his partner(s) from April 13 seemed to indicate that he had two partners (BR26). PO Bonifacio viewed the entry and confirmed that the first line read: "W/ Sgt. Hernandez." However, he claimed that he could not decipher the second line. When asked specifically if the second line read: "& Det. Pizarro," PO Bonifacio said that it "probably" did, and that he was "probably" working with Det. Pizarro at the

beginning of the tour. When asked if he actually recalled Det. Pizarro having worked in his vehicle at the beginning of that tour, PO Bonifacio replied, “Probably. I don’t remember.” PO Bonifacio later guessed that Det. Pizarro had been working in his vehicle but left during the tour, and that he had simply forgotten to note that in his memo book. He also explained that, as he was the operator that night, he typically would just copy Sgt. Hernandez’s memo book entries. PO Bonifacio later denied having any recollection of Det. Pizarro being present during the incident.

With regard to the relevant video footage, PO Bonifacio guessed that multiple uniformed units might have responded to the scene, and that one of those officers might have been temporarily moving the unmarked vehicle. However, he did not actually have a specific recollection of that taking place.

§ 87(2)(g)

- **Allegation (D) Discourtesy: Police Officer Yeraldy Bonifacio spoke discourteously to**

§ 87(2)(b)

In his IAB complaint, § 87(2)(b) initially recounted, “They was telling people to mind their business, [and to] go the eff in their house.” He used plural pronouns, seemingly to indicate that multiple officers used profanity while speaking to bystanders. However, he later specified that only one officer told § 87(2)(b) “Mind your fucking business and go upstairs.” Crucially, § 87(2)(b) attributed that statement to the unidentified officer who allegedly pushed him.

In his CCRB phone statement, § 87(2)(b) did not spontaneously recount the allegation. When prompted to discuss any uses of profanity by officers during the entire incident, § 87(2)(b) mentioned some but again did not repeat the allegation regarding an officer speaking discourteously to § 87(2)(b). When specifically reminded of the profane statement he alleged to IAB, § 87(2)(b) confirmed that an officer told § 87(2)(b) “Mind your fucking business.” However, he now attributed the statement to PO Bonifacio. He also recounted that § 87(2)(b) replied to PO Bonifacio, “No, you mind your fucking business.”

In his in-person statement, § 87(2)(b) again failed to spontaneously recount that any officer used profanity. When asked generally about the use of profanity, § 87(2)(b) reiterated that PO Bonifacio told § 87(2)(b) “Mind your fucking business and go in the building.” He now said that § 87(2)(b) replied, “Mind your fucking business. And y’all should leave him alone, cause he ain’t doing nothing.”

§ 87(2)(b) provided only a partial phone statement, did not respond to further attempts at contact, and did not provide physical descriptions of any officers. He claimed to have a poor recollection of the incident multiple times during his partial phone statement. He did recount, however, that he told the officers, “We’re not doing anything. What are you harassing us for?” PO Bonifacio approached him and said, “Mind your motherfucking business.” § 87(2)(b) told

PO Bonifacio to mind his motherfucking business, and PO Bonifacio asked him, “Who are you?” § 87(2)(b) replied, “I live here,” and he also told PO Bonifacio that § 87(2)(b) was visiting him. § 87(2)(b) did not spontaneously corroborate the allegation. When specifically prompted with the alleged profane statement, § 87(2)(b) claimed that an officer said, “Mind your fucking business before I come and arrest your ass.” § 87(2)(b)’s statement was found to be generally unreliable. His statement was quite inconsistent with those of § 87(2)(b) the other civilian witnesses, and the officers. He claimed to have heard multiple officers make various profane statements which were not alleged by anyone else, he claimed that the officers pushed § 87(2)(b) against a car and tried to cuff him, and he claimed that an officer threatened to arrest § 87(2)(b). § 87(2)(b) initially recounted that PO Bonifacio used profanity when he approached her and § 87(2)(b). However, the statements she attributed to him were about the public consumption of alcohol, and were entirely different than the profane statement alleged by § 87(2)(b) and § 87(2)(b). She later admitted that she could not actually recall any profane statements that PO Bonifacio made, and specifically could not recall if he ever said, “Mind your fucking business.”

SnagIt Clip #1, embedded below (BR27), shows the portion of the incident when PO Bonifacio approached § 87(2)(b) and § 87(2)(b)’s location:



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During his in-person interview, § 87(2)(b) viewed the footage and insisted that PO Bonifacio makes the profane statement around the time that SnagIt Clip #1 begins. He maintained that he could hear PO Bonifacio make the statement during the incident, even if the statement is not discernable in the footage. The footage shows that, at the time PO Bonifacio allegedly made the statement, § 87(2)(b) was engaged in conversation with Sgt. Hernandez on the north side of the street.

As detailed in the video summarization (BR04), PO Bonifacio cannot be heard making the statement in the footage, nor can he be heard using any profanity or directing anyone to mind their business or to go inside. However, § 87(2)(b) and § 87(2)(b) speak and yell throughout, so there are portions of PO Bonifacio’s statements which cannot be discerned. Based upon the statements which can be discerned, PO Bonifacio seems to be saying that officers will return to the area frequently to address individuals drinking in public. It should also be noted that § 87(2)(b) and § 87(2)(b) never say anything in the footage to indicate that PO Bonifacio, or any officer, has used profanity against them.

PO Bonifacio denied that he told any civilian bystander, “Mind your fucking business,” or, “Mind your motherfucking business.” However, he also claimed to have no recollection of a male bystander yelling obscenities at the officers, and he initially claimed that he could not recall if he spoke to any bystander. He later said that he probably did speak to bystanders, and that he “probably” told them that officers would frequently visit the block in the future to issue double-parking summonses. He did not recall speaking any bystander about the public consumption of alcohol. He later viewed the relevant portion of the video footage, and he now claimed that the bystanders were holding beers, and that he was telling them to “throw everything out and keep it moving.”

Sgt. Hernandez confirmed that PO Bonifacio spoke to civilian bystanders at some point, but he could not hear what PO Bonifacio was saying to them. He denied hearing PO Bonifacio make the alleged profane statement.

§ 87(2)(g)

- **Allegation (E)** § 87(2)(b)

§ 87(2)(b)

- **Allegation (F)** § 87(2)(b)

§ 87(4-b), § 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- Prior to this complaint, § 87(2)(b) had not been a party to any CCRB complaints. At the time he filed this complaint, § 87(2)(b) filed three additional complaints (BR29):
  - Case #201803266 involved an allegation of refusal to provide name/shield. To date, this investigation is still open.
  - Case #201804071 involved allegations of vehicle stop and interference with a recording device. To date, this investigation is still open.
  - Case #201804073 involved allegations of gun drawn and vehicle search. To date, this investigation is still open.
- Sergeant Jose Hernandez has been a member of the NYPD for 13 years and has been a subject in three CCRB complaints and four allegations, none of which was substantiated.
- Police Officer Yeraldy Bonifacio has been a member of the NYPD for six years and has been a subject in five CCRB complaints and 10 allegations, none of which was substantiated. One of these cases, comprising five allegations, is still under investigation.
- Det. Alberto Pizarro has been a member of the NYPD for 14 years and has been a subject in 14 CCRB complaints and 35 allegations, of five were substantiated:

- Case #201110628 involved a substantiated allegation of a vehicle stop against Det. Pizarro. The Board recommended instructions, but the NYPD imposed no penalty due to the statute of limitations.
- Case #201310644 involved substantiated allegations of stop, frisk, search of person, and physical force against Det. Pizarro. The Board recommended Charges. Det. Pizarro was found not guilty of the search and physical force allegations. He was found guilty of the stop and the frisk allegations, for which he forfeited three vacation days.

### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- On September 26, 2018, the undersigned requested a copy of any Notice of Claim filed regarding this incident with the NYC Comptroller's office. As of the date of this report, no response has been received. A copy of the response will be added to the case file upon receipt.
- § 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)
- § 87(2)(g)

Squad No.: \_\_\_\_\_

Investigator:		IM Daniel Giansante	
	Signature	Print Title & Name	Date

Squad Leader:			
	Signature	Print Title & Name	Date

Reviewer:			
	Signature	Print Title & Name	Date